

So Ordered.

Dated: December 17th, 2019



Frederick P. Corbit

Frederick P. Corbit
Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re. . .

**METROPOLITAN MORTGAGE &
SECURITIES CO., INC.,**

Debtor.

In re. . .

SUMMIT SECURITIES, INC.,

Debtor.

Jointly Administered Under:
No. **04-00757-FPC11**
Chapter 11

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW RE:
ORDER AUTHORIZING SALE OF
RECEIVABLES PORTFOLIOS,
APPROVING RECEIVABLES
PURCHASE AGREEMENT, AND
GRANTING RELATED RELIEF**

THIS MATTER having come on regularly for hearing upon the Motion filed October 28, 2019 [*Dkt. No. 14600*] (the "Motion"), of Metropolitan Mortgage & Securities Co., Inc. ("Metropolitan"), the Metropolitan Creditors' Trust (the "Metropolitan Trust"), Summit Securities, Inc. ("Summit"), and the Summit Creditors' Trust (the "Summit Trust," and together with the Metropolitan Trust, the "Trusts"), by

1 and through their counsel, for an Order Authorizing Sale Of Receivables Portfolios,
2 Approving Receivables Purchase Agreement, And Granting Related Relief (the “Sale
3 Order”), authorizing and approving the sale by the Trusts of certain portfolios of
4 Receivables¹ and related assets entitling the Trusts to certain payments (as defined in the
5 Receivables Purchase Agreement and whether owned by the Metropolitan Trust, the
6 Summit Trust, or jointly by the Trusts) to Strike Investments, Inc., a Delaware
7 corporation, and its successors and assigns (“Purchaser”), with such sale to be in
8 accordance with the terms and conditions of the Receivables Purchase Agreement, dated
9 as of September 30, 2019 (the “Purchase Agreement”), a true and correct copy of which
10 is attached to the supporting Declaration of Maggie Y. Lyons as Exhibit 1, providing for
11 the sale of the Metropolitan Portfolio, the Summit Portfolio, the Select Portfolio, and all
12 Settlement documents, Settlement Purchase Documents, Receivable Documents, and
13 other records and documents associated therewith, collectively referred to as the
14 “Portfolio Property,” to Purchaser pursuant to the Purchase Agreement, and the granting
15 of certain related relief; and the Court having reviewed the Motion and the supporting
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21 ¹ All capitalized terms not otherwise defined herein shall have the meanings as defined
22 in the Receivables Purchase Agreement. Certain of the terms of the Receivables
23 Purchase Agreement are summarized herein. Reference is made to the Receivables
24 Purchase Agreement for a complete recitation of the terms of the proposed
25 transaction. In the event of conflict between the terms as summarized herein and the
actual terms of the Receivables Purchase Agreement, the Receivables Purchase
Agreement will control.

1 Declaration of Maggie Y. Lyons, and having considered the statements of counsel; and
2 adequate and sufficient notice of the Motion, the Purchase Agreement, and all
3 transactions contemplated thereunder and in the Sale Order, having been given to those
4 parties in interest entitled to receive notice pursuant to the Standing Order Limiting
5 Notice In Jointly Administered Case entered herein on February 6, 2004 (the "Standing
6 Order"); and all interested parties having been afforded an opportunity to be heard with
7 respect to the Motion and all relief requested therein; and the Court having determined
8 that the legal and factual bases set forth in the Motion and supporting pleadings establish
9 just cause for the relief granted herein; and the Court making the following findings of
10 fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this
11 proceeding pursuant to Bankruptcy Rule 9014, with findings of fact to be construed as
12 conclusions of law and conclusions of law to be construed as findings of fact when
13 appropriate;
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18 NOW THEREFORE, the Court making the following Findings of Fact:

19 1. This Court has jurisdiction over the Motion under 28 U.S.C. §§ 157 and
20 1334, and this matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A). Venue of
21 these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.
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1 2. The statutory predicates for the relief sought in the Motion are
2 Sections 105(a), 363, and 1146(c) of the Bankruptcy Code and Bankruptcy Rules 2002
3 and 6004.
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5 3. On February 4, 2004 (the "Petition Date"), Metropolitan and Summit filed
6 their respective petitions for relief pursuant to chapter 11 of the Bankruptcy Code.
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8 4. An Order Confirming The Third Amended Joint Reorganization Plan Of
9 Metropolitan Mortgage & Securities Co., Inc. And Summit Securities, Inc. was entered
10 on February 13, 2006, confirming the Third Amended Joint Plan of Reorganization (the
11 "Plan"). Pursuant to the Plan, the Trusts were created to fulfill the rights and obligations
12 set forth pursuant to the Plan and the Trust Agreements by which they were created,
13 including the duty to use all commercially reasonable efforts to liquidate, sell, or
14 otherwise dispose of, as the case may be, all of the Metropolitan Trust Assets and the
15 Summit Trust Assets as soon as reasonably possible, subject always to the Plan
16 Administrator's obligation to take all actions in her capacity as the Plan Administrator in
17 a manner consistent with the best interests of the Beneficiaries, with the powers conferred
18 upon her under the Trust Agreements and the Plan and in accordance with the terms and
19 provisions of the Trust Agreements and the Plan.
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23 5. As evidenced by the Certificate of Service filed with this Court: (i) due,
24 proper, timely, adequate, and sufficient notice of the Motion, the proposed sale, and all
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1 transactions contemplated thereby, has been provided in accordance with Bankruptcy
2 Code sections 102(1), 105(a), 363, and 1112(b) and Bankruptcy Rules 2002 and 6004 and
3 in compliance with the Purchase Agreement; (ii) such notice was good, sufficient, and
4 appropriate under the circumstances; and (iii) no other or further notice of the Motion, the
5 proposed sale, or the transactions contemplated thereby is or shall be required.
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7 6. A reasonable opportunity to object and be heard with respect to the Motion
8 and the relief requested therein has been afforded to all persons and entities set forth by
9 the Standing Order, and as required by the Purchase Agreement, including the Claimants,
10 the Annuity Providers, and the Obligors.
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12 7. The Trusts and Purchaser executed the Purchase Agreement, dated as of
13 September 30, 2019, providing, among other things, for the sale of Portfolio Property.
14 As of the date hereof, and before the sale contemplated by the Purchase Agreement, the
15 Metropolitan Trust, the Summit Trust, or the Trusts jointly own the Portfolio Property.
16 Regardless of which Trust owns the Portfolio Property, the sale thereof, as provided
17 herein and in the Purchase Agreement, is a valid and binding sale of such property.
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19 8. The Purchase Agreement provides for a total sale price of \$1,214,000.00
20 (the "Purchase Price").
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22 9. On October 28, 2019, the Trusts filed the Motion and the supporting
23 Declaration of Maggie Y. Lyons with a copy of the Purchase Agreement.
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1 10. The Trusts have determined that Purchaser's offer contained in the
2 Purchase Agreement presents the best opportunity to realize the highest value for
3 Portfolio Property. The consideration provided by Purchaser pursuant to the Purchase
4 Agreement (i) is fair and reasonable, (ii) is the highest and best offer for the Portfolio
5 Property, and (iii) constitutes reasonably equivalent value and fair consideration under
6 the Bankruptcy Code and under the laws of the United States, any state, territory,
7 possession, or the District of Columbia.
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10 11. The Purchase Agreement was not entered into for the purpose of hindering,
11 delaying, or defrauding creditors under the Bankruptcy Code and under the laws of the
12 United States, any state, territory, possession, or the District of Columbia.
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14 12. Purchaser is not an "insider" of either of the Trusts, as that term is defined
15 in Bankruptcy Code section 101. Neither the Trusts nor Purchaser have engaged in any
16 conduct that would cause or permit the Purchase Agreement to be avoided under
17 Bankruptcy Code section 363(n).
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19 13. The Purchase Agreement and all of the transactions related thereto were
20 negotiated and have been and are undertaken by the Trusts, Purchaser, and their
21 respective counsel and advisors at arm's length, without collusion, and in good faith
22 within the meaning of section 363(m) of the Bankruptcy Code. As a result of the
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1 foregoing, the Trusts and Purchaser are entitled to the protections of section 363(m) of
2 the Bankruptcy Code.

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4 14. Exigent circumstances and sound business reasons exist for the sale of the
5 Portfolio Property pursuant to the Purchase Agreement. Entry into the Purchase
6 Agreement and consummation of the transactions contemplated thereby constitute the
7 exercise by the Trusts of sound business judgment, and are in the best interests of the
8 Trusts and their creditors. The Trusts have articulated good and sufficient business
9 reasons justifying the sale of the Portfolio Property pursuant to section 363 of the
10 Bankruptcy Code. Such business reasons include, but are not limited to, the fact that:
11 (i) the Purchase Price constitutes the highest or best offer for the Portfolio Property;
12 (ii) the Purchase Agreement and the Closing thereof will present the best opportunity to
13 realize the value of the Trusts on a going concern basis and avoid decline and devaluation
14 of the Portfolio Property, and (iii) the Purchase Agreement and the Closing thereof will
15 ensure an orderly transfer of the assets from the Trusts to Purchaser.
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19 15. The Trusts have full corporate power and authority to execute the Purchase
20 Agreement and all other documents contemplated thereby, and the sale of the Portfolio
21 Property has been duly and validly authorized by all necessary corporate power and
22 authority necessary to consummate the transactions contemplated by the Purchase
23 Agreement. No consents or approvals, other than those expressly set forth in the
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1 Purchase Agreement (which includes entry of the Sale Order), are required for the Trusts
2 to consummate such transactions.

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4 16. The consideration to be realized by the Trusts pursuant to the Purchase
5 Agreement is fair and constitutes reasonably equivalent value for the Portfolio Property
6 proposed to be sold thereunder. The Purchase Price is fair and reasonable and is
7 sufficient value for the Portfolio Property.
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9 WHEREFORE, having entered the foregoing Findings of Fact, the Court hereby
10 makes the Conclusions of Law set forth hereafter. To the extent any of the following
11 conclusions of law constitute findings of fact, they are adopted as such.
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13 1. All requirements of section 363(b) of the Bankruptcy Code and any other
14 applicable law relating to the sale of the Portfolio Property have been satisfied.

15 2. The transaction reflected in the Purchase Agreement represents the highest
16 or best offer received by the Trusts for the Portfolio Property. The Trusts have been
17 authorized under section 363 of the Bankruptcy Code to determine in their business
18 judgment the highest or best offer, taking into account all relevant factors. This
19 determination was made in good faith, in a fair manner, without the presence of fraud.
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21 3. The transactions contemplated by the Purchase Agreement have been
22 bargained for and are undertaken at arm's length, without collusion, and in good faith as
23 that term is used in section 363(m) of the Bankruptcy Code. Purchaser and the Trusts
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1 have not engaged in any conduct that would cause or permit the Purchase Agreement to
2 be avoided pursuant to section 363(n) of the Bankruptcy Code. In the absence of a stay
3 pending appeal, if Purchaser consummates the Purchase Agreement at any time after
4 entry of the Sale Order, Purchaser shall be entitled to the protections of section 363(m) of
5 the Bankruptcy Code if the Sale Order or any authorization contained therein is reversed
6 or modified on appeal.
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9 4. The transfer of the Portfolio Property: (a) represents or will represent a
10 legal, valid, and effective transfer of the Portfolio Property; (b) vests or will vest
11 Purchaser with all right, title, and interest (including common law right) of the Trusts in
12 and to the Portfolio Property; and (c) constitutes a transfer for reasonably equivalent
13 value and fair consideration under the Bankruptcy Code and applicable state law
14 fraudulent conveyance or fraudulent transfer laws.
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17 5. The transactions contemplated by the Purchase Agreement are determined
18 to be in furtherance of the Plan and the Trust Agreements in that the net proceeds of the
19 sale of the Portfolio Property are essential and required to continue to fund the Plan for
20 the Trusts, and therefore, the transfer of the Portfolio Property to Purchaser and the
21 related transactions are exempt under section 1146(c) of the Bankruptcy Code from any
22 stamp or similar tax in all necessary jurisdictions related to the sale and transfer of the
23 Portfolio Property to Purchaser.
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6. All provisions of the Sale Order are nonseverable and mutually dependent.

/// End of Order ///

Presented by:

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